IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

WP(C).No. 34894 of 2005(D)

PETITIONER:

K.J. JOHNSON, S/O. JACOB,
AGED 53 YEARS, SENIOR TELECOM OFFICE ASSISTANT
(RETIRED), PALA, RESIDING AT SARADA BHAVAN,
MANALINKAL P.O., POOVATHILAPU, KOTTAYAM-686 503.

BY ADV. SRI.P.A.KUMARAN
SMT.REKHA VASUDEVAN

RESPONDENTS:
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1. **THE GENERAL MANAGER,**
   BSNL, KOTTAYAM.

2. **THE DIVISIONAL ENGINEER (PHONES),**
   BSNL, PALA.

3. **ASSISTANT GENERAL MANAGER (ADMN.),**
   OFFICE OF THE PRINCIPAL GENERAL MANAGER,
   TELECOM, BSNL LTD., KOTTAYAM.

BY ADV. SRI.P.M.M.NAJEEB KHAN, SC, BSNL for R1 to R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE OPTION SUBMITTED BY THE PETITIONER.

EXT.P2: COPY OF THE MEMO NO.Q.49/9 DTD. 12/06/2002 ISSUED BY THE 2ND RESPONDENT.

EXT.P3: COPY OF THE ORDER DTD. 7/10/2002 IN CC 558/99 OF THE HONOURABLE JUDICIAL MAGISTRATE OF THE FIRST CLASS, PALA.

EXT.P4: COPY OF THE LETTER NO.Q-49/13 DTD. 23/10/2002.

EXT.P5: COPY OF THE MEMO NO.Q-49/COL.1/2004/3 DTD. 6/10/2004 ISSUED BY THE 2ND RESPONDENT.

EXT.P6: COPY OF THEMEMO NO.Q-49/COL.1/2004/7 DTD. 4/11/2004 ISSUED BYTHE 2ND RESPONDENT.

EXT.P7: COPY OF THE ORDER NO.Q-49/COL.1/2004/9 DTD. 1/12/2004 ISSUED BY THE 2ND RESPONDENT.

EXT.P8: COPY OF THE REPRESENTATION DTD. 9/09/2005 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.

EXT.P9: COPY OF THE LETTER DTD. 22/01/2002 ISSUED BY THE THIRD RESPONDENT.

EXT.P10: COPY OF THE CIRCULAR NO.BSNL/4/SR/2000 DTD. 2/01/2001.

EXT.P11: COPY OF INTERIM ORDER DTD. 8/03/2006 IN I.A.3222/2006 IN WP(C) 34894/2005.

EXT.P12: COPY OF LETTER NO.Q2779/CR/PEN/31 DTD. 16/05/2006 ISSUED BY THE CHIEF ACCOUNTS OFFICER (CA), OFFICE OF THE PGMT, KOTTAYAM.

EXT.P13: COPY OF SANCTION MEMO NO.STA/Q2779/CR/PEN/28 DTD. 12/05/2006 ISSUED BY THE 3RD RESPONDENT.

EXT.P14: COPY OF REPRESENTATION DTD. 20/05/2006 SUBMITTED BY THE PETITIONER.

EXT.P15: COPY OF SANCTION MEMO NO.CCA/KRL/1-3/C-782/05-06/13 DTD. 6/06/2006.

EXT.P16: COPY OF SANCTION MEMO NO.CCA/KRL/1-3/C-782/2005-6/14 DTD. 6/06/2006.

1ST RESPONDENT'S EXHIBITS:

EXT.R1.A: COPY OF THE LETTER DTD. 19/01/2005 OF KOTTAYAM DISTRICT POSTS, TELICOM & BSNL EMPLOYEES CO-OPERATIVE BANK LTD.NO.K.343,KOTTAYAM.

EXT.R1.B: COPY OF THE UNDERTAKING DTD. 22/02/2001 GIVEN BY THE PETITIONER AND ACCEPTANCE BY THE OFFICIAL.

EXT.R1.C: COPY OF THE PROHIBITORY ORDER LETTER DTD. 18/07/2005 OF SPECIAL DY.TAHSILDAR (RR) KSFE LTD., KOTTAYAM/ NO.4472/05-06.

EXT.R1.D: COPY OF THE PROHIBITORY ORDER NO.4199/04-05 DTD. 17/11/2005 OF SPECIAL DEPUTY TAHSILDAR (RR) KSFE LTD. KOTTAYAM.

EXT.R1.E: COPY OF THE LETTER DTD. 23/03/2006 OF BSNL, TRIVANDRUM.

EXT.R1.F: COPY OF LETTER NO.CCA/KRL/1-3/C-782/05-06/9 DTD. 15/05/2006 OFFICE OF THE CONTROLLER OF COMMUNICATION ACCOUNTS KERALA CIRCLE TRIVANDRUM.

EXT.R1.G: COPY OF LETTER DTD. 23/05/2006 SUBMITTED BY SRI.JOHNSON TO THE PGMT BSNL, KOTTAYAM.

EXT.R1.H: COPY OF LETTER NO.Q 2779/CR.PEN DTD. 2/06/2006 OF BSNL, KOTTAYAM.

EXT.R1.I: COPY OF LETTER NO.CCA/KRL/1-3/C-782/05-06/17 DTD. 28/06/2006 OF OFFICE OF THE CONTROLLER OF COMMUNICATION ACCOUNTS KERALA, TRIVANDRUM.

EXT.R1.J: COPY OF LETTER NO.CCA/KRL/1-3/C-782/2005-06/23 DTD. 17/08/2006 OF OFFICE OF COMMUNICATION ACCOUNTS KERALA, TRIVANDRUM.

EXT.R1-K: COPY OF LETTER DTD. 1/06/2006 OF KERALA STATE FINANCIAL ENTERPRISE.

/TRUE COPY/

P.A.TO JUDGE

KSS

V.GIRI,J.

W.P.(C) No. 34894 of 2005

Dated this the 19th day of September, 2007

JUDGMENT

The petitioner, who was working as a Senior Telecom Office Assistant, was proceeded against in departmental proceedings which ended in Ext.P7 order, by which he was directed to compulsorily retire with effect from 16.1.2002. But the order Ext.P7 is dated 1.12.2004. The writ petition is filed essentially seeking disbursal of retirement benefits.

2. A detailed counter affidavit and additional counter affidavit have been filed on behalf of the respondents.

3. After having heard the learned counsel for the petitioner as also the learned Standing Counsel for the respondents, I find that this Court cannot go into the correctness of certain claims made by the Department, which are required to be satisfied, from the retirement benefits otherwise due from the petitioner. According to the respondents, the following are the departmental dues to be recovered from the petitioner, as on 22.3.2007:

a) Overpayment of pay and allowances Rs. 7635/=

b) Rent of Quarter from 16.1.2002 and damage rent from 15.2.2002 to 30.6.2005 - Rs.28230
rent from 1.11.2001 to 15.2.2002 - Rs.360/=

Total **Rs. 28590/=**

c) Motor Cycle advance with interest Rs. 30713/=

d)	Electricity charge of Quarter	Rs.684/=
e)	Water charge	Rs.400/=
f)	Cost of ceiling fan missing from quarter	Rs.250/=
g)	Telephone bills outstanding(against closed telephone numbers PLI 201477&KLP 247450)	Rs.4479/=
	Total	**Rs.72751/=**

Other Liabilities

a)	P&T BSNL employees Co-operative bank	Rs.131067/=
b)	Court attachment	
i)	KSFE RR 4472/05-06 dtd.18.7.2005	Rs.21208/- + interest
ii)	KSFE RR 4199/04-05 dtd.17.11.2005	Rs.52976/- + interest

4. In my view, the petitioner cannot be required to pay rent for the quarters in the manner computed by the respondents, till the date of Ext.P7 order. Though the date of effect of compulsory retirement as 16/1/2002, the petitioner cannot be considered as having remained in unauthorised occupation, atleast till the date of the order i.e. Ext.P7. Therefore, the actual amount due from the petitioner by way of licence fee/rent should be recomputed. Learned counsel for the petitioner admits that if the amounts are due by way of advance of motor cycle as also electricity charges and water charges, cost of ceiling fan missing from the quarter and towards telephone bills, the same could be recovered from the amounts otherwise

due to the petitioner.

5. There is a dispute regarding the amounts shown under the head of other liabilities. According to the learned counsel for the petitioner, certain amounts due to the petitioner by way of retirement benefits cannot be attached. Learned Standing Counsel submits that, apparently in respect of the amounts due to the Co-operative Bank and to the KSFE, suitable intimation had already been obtained from the department and furnished to the Co-operative Bank and KSFE by the petitioner and if that be so, BSNL is bound to abide by the undertaking which was given earlier, at the instance of the petitioner.

6. This Court cannot go into disputed questions of facts under Article 226 of the Constitution of India. It is for the department to take an appropriate decision, in this regard, after hearing the petitioner on these disputed issues.

7. The writ petition is therefore *disposed of* in the following terms:-

i) A fresh statement of dues shall be furnished to the petitioner within a period of one month from the date of receipt of a copy of this judgment showing the details of the amount due from the petitioner in that regard. As regards the amounts payable by the petitioner under *Sub Clauses a,b,c,d,e,f and g,* there shall be no dispute on the part of the petitioner and the same may be treated as amounts actually due from the petitioner and so shown in the statement. The amount due by way of rent/licence fee shall be re-

computed in the manner mentioned above.

ii) As regards the amount shown as other liabilities, the question of liability of the petitioner and quantification of the same shall be decided by the respondents, after hearing the petitioner on the same. In this regard, the petitioner may be given an opportunity of being represented by duly authorised representative.

iii) Appropriate orders determining the amounts actually due to the petitioner by way of retirement benefits, in accordance with law, shall be passed, within a period of four months from the date of receipt of a copy of this judgment.

V.GIRI, JUDGE

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